

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the  
Application of Ohio Power  
Company for Authority to  
Establish a Standard  
Service Offer Pursuant to  
R.C. 4928.143, in the Form  
of an Electric Security Plan**

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**Case No. 23-23-EL-SSO**

**In the Matter of the  
Application of Ohio Power  
Company for Approval of  
Certain Accounting  
Authority**

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**Case No. 23-24-EL-AAM**

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**REPLY BRIEF OF  
CONSTELLATION ENERGY GENERATION, LLC AND  
CONSTELLATION NEWENERGY, INC.**

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## I. INTRODUCTION

Repeatedly this year, the Commission has expressed concern with the standard service offer (“SSO”) prices and sought feedback on potential changes to the SSO auction construct that will reduce uncertainty for suppliers, increase supplier participation in the competitive bidding process (“CBP”), and mitigate increasing and volatile SSO prices. *See In re the Procurement of Standard Service Offer Generation for Customers of Ohio Power Co.*, Case No. 17-2391-EL-UNC, et al., Entry (Jan. 3, 2023) at ¶¶3-4; *In re the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, Entry (July 26, 2023) and Finding and Order (Dec. 13, 2023); and *In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case Nos. 22-900-EL-SSO, et al., Opinion and Order (Aug. 9, 2023) at ¶247.

The issues giving rise to these Commission calls for potential changes persist to this day. Supplier participation in AEP Ohio’s default service auction remains depressed and SSO prices are at historic highs. (Const. Ex. 2, 18:4-13; Hearing Tr. 831:5-7 (Kelso Rebuttal Test., Cross-Examination)).<sup>1</sup> Yet, the Stipulation does nothing to substantively modify the CBP auction construct to attract more bidders or address the Ohio-specific risk premiums imbedded in SSO prices currently being paid by default service customers. In other words, the Stipulation fails to address the vital needs of AEP Ohio’s default service customers on a primary element of the electric security plan (“ESP”) and, therefore, cannot be considered just and reasonable.

Unlike the Stipulation, Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively, “Constellation”) answered the Commission’s call by proposing two

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<sup>1</sup> AEP Ohio’s most recent SSO auction also saw depressed supplier turnout as compared to historic norms, with only nine registered bidders participating. *See In re the Procurement of Standard Service Offer Generation for the Customers of Ohio Power Co.*, Case No. 23-1097-EL-UNC, Finding and Order (Nov. 30, 2023) (accepting results of auction based on the November 29, 2023 report filed by the auction manager).

understandable, simple and effective changes to the CBP auction process. Those changes are the use of class-based auctions and the implementation of a load migration pricing band mechanism. Contrary to the assertions made by the signatory parties, these changes are readily able to be implemented and will ultimately result in better SSO prices for AEP Ohio's default service customers. The signatory parties' arguments against adopting these changes now—changes that the record shows will benefit AEP Ohio's default service customers—are without merit and should be rejected by the Commission. Instead, Constellation urges the Commission to adopt its proposed changes to the CBP auction construct. AEP Ohio's default service customers will benefit from their adoption because they directly address significant issues contributing to decreased supplier participation and historically high SSO auction prices. They are proven changes that have been effective in other jurisdictions.

The signatory parties also assert that the Stipulation presents a proposed ESP that is better in the aggregate than a market-rate offer (“MRO”) and that the changes brought about by the Stipulation are in the public interest. But, the record lacks important information and evidence necessary for the Commission to draw these conclusions. Moreover, many Stipulation provisions touted by the signatory parties as benefits simply remove unjust, unreasonable, and unlawful provisions from AEP Ohio's initial application. The Commission should not consider these modifications to be Stipulation benefits that are in the public interest.

The terms of the Stipulation are simply not enough. They are not enough to attract bidders back to Ohio's SSO auctions, not enough to address increasing and volatile SSO auction prices, and not enough to provide the relief needed by AEP Ohio's default service customers. The record does not support that either the Stipulation or the proposed ESP is just and reasonable without modifications to address these concerns.

## **II. ARGUMENT**

The Commission should modify the Stipulation to adopt Constellation's proposed modifications to the CBP auction construct and reject the signatory parties' arguments to the contrary. As detailed below, the signatory parties' criticisms of Constellation's proposals to implement class-based auctions and a load migration pricing band mechanism are unsupported by the record. Further, AEP Ohio has failed to meet its burden to show that the Stipulation as proposed meets important and required statutory and regulatory criteria for approval. Finally, the Commission should reject the signatory parties' attempt to support the Stipulation by touting the benefits of removing unjust, unreasonable, and unlawful provisions from AEP Ohio's initial application.

### **A. Criticisms of Constellation's Proposals Lack Merit.**

The signatory parties urge the Commission to adopt the Stipulation without modification and to reject Constellation's proposed improvements to the CBP auction construct. Generally, they assert that Constellation's proposals are ill-defined and that there is insufficient evidence to show that AEP Ohio's customers will benefit from their adoption now. They also argue that AEP Ohio's "consent to continuing jurisdiction" over CBP auction issues is a sufficient process to address any ongoing concerns with the CBP auction construct. Contrary to these assertions, however, the record shows that Constellation's proposals are reasonable and straightforward steps that the Commission can and should take now to reverse negative trends being seen in Ohio's default service auctions. The record establishes that Constellation's proposed modifications to the

CBP auction construct are proven and will benefit AEP Ohio's default service customers through increased auction participation and ultimately better SSO prices.

**1. Constellation's proposals are understandable, simple, and readily implemented.**

In its initial brief, IGS asserts that the Commission should reject what it describes as Constellation's (and OCC's) "amorphous plans" for modifications to the CBP auction construct. (IGS Brief at 2). There is nothing amorphous with Constellation's two proposals. IGS conveniently ignores the details of Constellation's proposal for class-based auctions, refuses to acknowledge that class-based procurements are commonly held in other states, and downplays the expertise of AEP Ohio's auction manager who can and has the experience and capabilities to handle class-based procurements.

a. Class-based auctions are common and readily implemented.

Constellation has proposed that AEP Ohio institute class-based auctions that divide customers along "natural breakpoints" within AEP Ohio's service territory: "Residential (all residential customers or customers under residential revenue class at Secondary Voltage), Commercial (all small commercial and commercial revenue classes at secondary voltage), and Large Commercial and Industrial (all industrial and commercial revenue class customers at transmission and primary voltage)." (Const. Ex. 2, 23:17-21). These proposed breakpoints place AEP Ohio's customers into categories with similar load characteristics, which will allow default service suppliers to better and more accurately allocate the risks and costs associated with providing SSO to each class.

This procurement approach is also consistent with the approach used to procure default service in other PJM states. All Pennsylvania and Maryland electric utilities procure default service by class. (Const. Ex. 2, 25:2-3). New Jersey similarly procures default service for

residential and small commercial customers together, with a separate auction being held for large industrial and commercial customers. (Const. Ex. 2, 25:3-5). The use of class-based default service procurements in all of these other jurisdictions shows that they can and have been successfully implemented on a broad basis.

Finally, AEP Ohio's own auction manager has the experience, capability, and systems necessary to execute auctions using class-based procurements. (Const. Ex. 2, 5-7, Attachment A). AEP Ohio will continue with this auction manager in the ESP V and, therefore, could easily leverage these systems and capability to implement class-based auctions for ESP V. Contrary to IGS's assertion that Constellation's proposal for class-based auctions is too "amorphous" to be implemented, this evidence shows that the "natural breaks" in AEP Ohio's customer base and the common use of class-based auctions (including by AEP Ohio's auction manager) lend themselves perfectly to the implementation of class-based auctions in ESP V.

b. The proposed load migration pricing band is similar to the mechanism used successfully for years in Maryland.

Arguments that Constellation's load migration pricing band proposal is ill-defined or unprecedented are baseless. (*See, e.g.*, IGS Brief at 6-7). Mr. Indukuri's testimony fully explained Constellation's proposal, how the mechanism would operate, and the benefits that its adoption would have for AEP Ohio's default service customers. (Const. Ex. 2, 20:4-23:3). The use of aggregate peak-load contributions ("PLCs") as the baseline for the upper and lower mitigation thresholds simplifies the process of determining when and how the mechanism is triggered. (Const. Ex. 2, 20:19-21). It also importantly ensures that only outside-the-threshold customer migration to and from SSO during the delivery term—and not seasonal load fluctuations—triggers the mechanism.



Moreover, Constellation's banding proposal is similar to a banding threshold mechanism that has been used in Maryland for years. (Const. Ex. 2, 20:4-5). Over twenty years ago, the Maryland Commission endorsed the proposed adoption of a volumetric risk mechanism for the procurement of default service load, stating "[t]his will provide protection and flexibility to wholesale suppliers thus enabling more competitive prices and, in turn, will benefit customers." *See In re the Commission's Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service*, Case No. 8908, Order No. 78400, 2003 Md. PSC LEXIS 5 (Apr. 29, 2003) at \*85.

The Commission should reject arguments that Constellation's load migration pricing band is difficult to understand or use. It should similarly reject arguments that such mechanisms are unproven. The record does not support this argument by IGS; rather, Mr. Indukuri's testimony clearly explains how Constellation's proposal would work, and Maryland's long-term use of a load migration pricing band supports a finding that these mechanisms are an effective means to provide certainty to suppliers and promote competition for the benefit of default service customers.

**2. The record fully supports modifying the Stipulation because the Stipulation fails to include a CBP with class-based auctions to the detriment of default service customers.**

The signatory parties' assertions that there is insufficient evidence for the Commission to conclude that AEP Ohio's default service customers will benefit from class-based auctions are also without merit. (*See, e.g.*, AEP Brief at 34-38; IGS Brief at 6-7). The record shows that class-based auctions will allow default service suppliers to better and more accurately allocate risks and costs, eliminating cross subsidies and leading to better auction outcomes for all customers. (Const. Ex. 2, 27:13-14; Hearing Tr. 723:6-724:10). The data in the record shows that Ohio's auction results are trending negatively as compared to other PJM states who have class-based auctions and receive additional product components through their default service procurements, and that a

significant factor allowing these other states to attract more suppliers and lower premiums is the structure of their procurements (i.e., class-based auctions). (Const. Ex. 2, 19:6-12). The Stipulation completely fails to address these issues impacting SSO prices, and the record shows that AEP Ohio’s default service customers would benefit from the Commission modifying the Stipulation to include class-based auctions as part of the CBP auction construct.

- a. Class-based auctions better and more accurately allocate risks and costs, eliminating cross-subsidies.

AEP Ohio asserts that a benefit of “slice of system” procurements (and thus a reason not to adopt class-based auctions) are the “blended” prices paid by all classes of customers. (AEP Brief at 35). As Mr. Indukuri explained, however, “[f]orcing certain customers to subsidize others **does not lower total service costs, but serves only to distort the evaluations customers must make in considering their choices of supply and products—ultimately leading to inefficiency and higher total costs of service.**” (Const. Ex. 2, 26:11-14) (emphasis added). The “slice of system” procurement approach currently does just this by making residential and small commercial customers subsidize the risk premiums associated with serving the highly variable load shapes of larger commercial and industrial customers. (Const. Ex. 2, 14:14-17).

Moving to class-based auctions will allow suppliers to more accurately predict and allocate risks associated with serving differing sets of customers, eliminating the cross subsidies that currently exist in the slice-of-system-based prices referenced by AEP Ohio. (Const. Ex. 2, 27:13-14). It will also improve outcomes for all customer classes. (Hearing Tr. 723:6-724:10). Mr. Indukuri explained at hearing why accurately reflecting customer risks in default service prices in order to send proper price signals results in better prices for all customers:

Q. So is that a good thing . . . in your opinion that customers have the option of the SSO in circumstances where it’s a lower price than the CRES offers?

A. It's – I think the SSO price that reflects the risks appropriately is the best option for customers because it helps customers make a decision based on all the risks that are inherent at that point in time.

Q. Yeah. So at some time CRES prices may be lower than the SSO and vice versa, correct?

A. Again, as long as the risks are appropriately reflected, that is the appropriate price that the customers can take into account when making a decision.

Q. And that's a benefit to have competitive choice including whether to go back to the SSO if that is a more favorable price.

A. No, because if customers basically move into the SSO and that behavior is unpredictable, then that risk is appropriately priced by suppliers, and under the current construct, everyone, even the ones that are not causing that risk, are paying for it. So everyone actually will suffer when customers migrate in and out of SSO without any limit because . . . suppliers have to pay the cost associated with that movement by appropriately buying more hedges . . . and it's a cost that then is passed on to the customers.

(Hearing Tr. 723:6-724:10).

As this exchange makes clear, default service suppliers' ability to better allocate risks and costs through class-based auctions will lead to better SSO auction outcomes for all classes of customers. This is also the case for AEP Ohio's larger commercial and industrial customers who decide to remain on SSO, since sufficient default service load exists for them to draw supplier interest to serve their particular load as well. (Hearing Tr. 778:3-11).

In its initial brief, AEP Ohio focuses heavily on Mr. Indukuri's above-referenced statement about customers moving back to SSO based on lower prices. (AEP Brief at 38). But, as the record clearly shows, Mr. Indukuri was not stating that customers taking advantage of lower SSO prices is a bad thing (if such prices appropriately reflect risks); rather, he was explaining the danger of customers moving back to SSO service based on inaccurate price signals caused by "slice of

system” procurements. (Hearing Tr. 723:6-724:10). As discussed below in Section II.A.3, large commercial or industrial customers’ attempts to use “arbitrage” tactics—moving back and forth between the competitive market and SSO whenever it is most advantageous to do so—exacerbates risk concerns and causes SSO suppliers to build in higher risk premiums into their SSO bids.

b. The data in the record supports a change now to class-based auctions.

AEP Ohio and IGS argue that the record in this case is insufficient to justify a move to class-based auctions at this time. (*See, e.g.*, AEP Brief at 3-4, 34; IGS Brief at 1, 7-8). These arguments ignore the detailed expert testimony and other data in the record demonstrating that AEP Ohio’s customers will benefit from class-based auctions in ESP V. Mr. Indukuri presented unrebutted expert testimony detailing the systemic issues that currently exist with the CBP auction process. He further detailed how Constellation’s proposed modifications would directly address those systemic issues to the benefit of AEP Ohio’s default service customers. Specifically, AEP Ohio and IGS ignore the expert testimony related to the following items, which were detailed comprehensively in Constellation’s initial brief:

1. Under the current CBP auction construct (which AEP Ohio proposes to continue for four more years), residential customers subsidize (and pay risk premiums for) risks caused by larger commercial and industrial default service customers. (Const. Ex. 2, 14:14-17).
2. Inaccurate price signals resulting from the “slice of system” procurement approach lead to higher prices for all customers. (Const. Ex. 2, 27:4-5).
3. The better and more accurate allocation of costs and risks resulting from class-based auctions will improve outcomes for all classes of customers. (Hearing Tr. 723:6-724:10).
4. Recent auction results show that Ohio has been more negatively impacted by recent market volatility than other states. (Const. Ex. 2, 26:1-2; AEP Ohio Ex. 9, Kelso Rebuttal Test., Exhibit LOK-1 at 7-8).

5. AEP Ohio's last two default service auctions (in November 2022 and March 2023) have drawn significantly less bidder interest. (Const. Ex. 2, 18:6-1).
6. The procurement structure in other jurisdictions like Pennsylvania, including class-based auctions, has been a significant factor in drawing more bidder interest and lower premiums for default service. (Const. Ex. 2, 18:6-13).
7. There would be sufficient supplier interest in serving AEP Ohio's large commercial and industrial default service customer load if Ohio moves to class-based auctions. (Hearing Tr. 778:5-20).
8. Class-based auctions would not be difficult to implement as part of ESP V, as AEP Ohio's auction manager has experience with class-based procurements for default service. (Const. Ex. 2, Attachment A).

Contrary to the signatory parties' assertions, the record in this case demonstrates that AEP Ohio's default service customers would benefit now from the move to class-based auctions as part of ESP V. The Commission can and should give this evidence substantial weight and act now to fix the issues caused by AEP Ohio's "slice of system" approach to default service procurement.

- c. Recent auction results show that Ohio's default service customers are "paying more for less" and will needlessly continue to do so under the Stipulation to their detriment.

AEP Ohio criticizes Mr. Indukuri's analysis of recent auction trends by attacking the timeframe of the auctions cited in Figure 3, on page 6, in his direct testimony (Const. Ex. 2, 26:1-2), which shows the results of recent auctions held by Ohio's and Pennsylvania's electric utilities in 2022. (AEP Brief at 36-38). This criticism misses the point of Mr. Indukuri's analysis, which is that Pennsylvania default service customers (and default service customers in other states with class-based procurement structures) have been better insulated from the impact of recent market events than Ohio's default service customers. It is undisputed that Pennsylvania's utilities procure additional products through their default service, including renewable energy credits and/or transmission. (Const. Ex. 2, 25:15-21). Thus, when Ohio's clearing prices for default service are higher than those in Pennsylvania, it means that Ohio's default service customers are "paying more

for less” than their Pennsylvania counterparts. This is precisely what Figure 3 in Mr. Indukuri’s testimony shows. And, as Mr. Indukuri explained, the primary driver behind this differential in auction prices is higher perceived risks in Ohio as compared to other states:

Although there were increases in the ACPs in other PJM default service auctions, the increase in the AEP Ohio ACPs during auctions conducted near the same time was substantially higher . . . This indicates that the risks are higher in Ohio than in these other states. **The procurement structure(s) and/or contractual mitigation provisions in Pennsylvania, Maryland, and New Jersey were a significant factor in drawing more bidder interest and in lower premiums** in their respective default service procurements.

(Const. Ex. 2, 19:6-12) (emphasis added).

AEP Ohio’s criticism of Mr. Indukuri’s analysis also ignores that this trend has continued in subsequent auctions. In the Spring 2023 auctions for the June 2023 through May 2024 delivery period, multiple Pennsylvania utilities again had lower clearing prices than all Ohio utilities despite the additional components included in Pennsylvania’s default service product. (AEP Ohio Ex. 9, Kelso Rebuttal Test., Exhibit LOK-1 at 8). This additional data shows that the risks in Ohio continue to be greater than in other jurisdictions, that additional risk premiums are included in bids as a result, and that AEP Ohio’s default service customers would be better served by a different procurement structure—like the class-based auctions used in Pennsylvania and other PJM states.

**3. The Stipulation fails to include a load migration pricing band mechanism to the detriment of default service customers.**

The signatory parties assert that there is inadequate evidence to support Constellation’s proposed implementation of a load migration pricing band mechanism and that any such mechanism would shift risks from SSO suppliers to customers. These arguments ignore that AEP Ohio’s default service customers **are already paying for these risks** in the form of unnecessary risk premiums in suppliers’ CBP auction bids. (Const. Ex. 2, 21:22-24; Hearing Tr. 679:8-23).

Contrary to the signatory parties' assertions, Constellation's proposal will reduce overall risk by creating a market design construct where default service suppliers continue to manage the risk of a historically reasonable and predictable level of SSO migration, and customers do not pay for the mere potential risk of large-scale customer migration. (*Id.*; Const. Ex. 2, 20:21-24).

a. Default service customers already pay increased risk premiums for supplier uncertainty.

AEP Ohio's default service customers are currently paying increased and unnecessary risk premiums for the substantial volatility in default service load due to migration seen in AEP Ohio's service territory in recent years. This volatility has been driven, in part, by large changes in government aggregations across the state—where the percentage of Ohio residential customers served by governmental aggregations went from a high of approximately 73% to a low of 53% in 2022 alone. (Const. Ex. 2, 15:4-5). There has also been substantial movement of commercial and industrial customers back to AEP Ohio's SSO—with the commercial default service load in 2022 being 250% higher at its peak than the average commercial default service load from 2019-2021, and the industrial default service load being 1,900% higher during that same period. (Const. Ex. 2, 15:20-23).

Now that this large-scale migration has been seen in Ohio, default service suppliers must account for the possibility of it happening again in their CBP auction bids. Default service suppliers must account for the realistic possibility that they will be required to serve up to 200% more default service load than anticipated at the time of the SSO auction. (Const. Ex. 2, 21:16-17). AEP Ohio's default service customers are presently paying for this uncertainty in the form of increased risk premiums.

- b. The load migration pricing band mechanism addresses this uncertainty in a reasonable and effective manner.

Constellation's proposed load migration pricing band mechanism addresses this uncertainty and the risk premiums currently being paid by AEP Ohio's default service customers. The 105% upper band proposed by Constellation means that suppliers will continue to take on the risk of a historically reasonable and predictable amount of load migration. (Const. Ex. 2, 20:21-24). The risk premiums currently being paid by AEP Ohio's default service customers would be substantially mitigated, however, because suppliers would not have to account for the **mere possibility** of larger scale migration in their CBP auction bids.

Some parties contend that a load migration pricing band mechanism would shift risk from suppliers to customers. (*See, e.g.*, IGS Brief at 3, 7-8; AEP Brief at 4, 39-40). They are wrong. As Mr. Indukuri explained at hearing, this is not a "shifting" of risks to AEP Ohio's default service customers but rather a reduction of the overall risk due to the mitigation of excess costs currently included in SSO prices.

Q. Under the proposals that you are advancing, namely the 8 percent band proposal,<sup>2</sup> you shift some of that risk to the customers, correct, under that proposal?

A. No, it does not shift the risk. What it does is create a market design construct wherein the customers do not pay for the potential risk of customer migration because suppliers routinely pricing the product would have to take into account the potential costs and incorporate that into their bids. **So in a way it would actually reduce the risk . . . that the customers would be exposed to in terms of the excess costs that they are paying today which they wouldn't under the proposals that I have.**

(Hearing Tr. 679:8-23) (emphasis added).

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<sup>2</sup> Mr. Indukuri proposes an upper band of 5% and a lower band of 3%, which collectively are an 8% band. (Const. Ex. 2, 20:21-24, 21:1-2, 22:2-6).



The lower band proposed by Constellation will similarly benefit AEP Ohio's default service customers by reducing unnecessary risk. As explained in Constellation's initial brief, default service suppliers are faced with a difficult decision when customers migrate off of default service during the delivery period. They can either release their higher-priced hedges, which they will have to sell at a loss. (Const. Ex. 2, 12-17). Or, they can hold onto those now-unnecessary hedges and suffer the consequences of fixed costs and falling default service load. (*Id.*). As with the risk of unpredictable increases in default service loads, AEP Ohio's customers also pay for the uncertainty caused by falling default service load in the form of risk premiums. (Const. Ex. 2, 22:17-20). Constellation's lower load migration pricing band proposal substantially reduces this risk (and the risk premiums paid by AEP Ohio's customers as a result) by providing more certainty to suppliers about their ongoing default service load obligations in the event default service load decreases. Altogether, the proposed load migration pricing band ameliorates supplier risk and will lead to better auction clearing prices and better outcomes for AEP Ohio's default service customers.

- c. The load migration pricing band mechanism can modify customer behavior in a way that will positively impact the competitive markets and customers.

An additional benefit of Constellation's proposal is the impact it can have on the participation of large commercial and industrial customers in the competitive market. AEP Ohio argues that the load migration pricing band should not be adopted because it creates the potential for "exposure to volatile market prices at the very time when the SSO would serve the most value to non-shopping customers (*i.e.*, when market prices go up and shopping customers migrate to the SSO safety net)." (AEP Brief at 39). This argument fails to account for how this alleged "safety net" actually provides large commercial and industrial customers (who are sophisticated

participants in the market) with the best of both worlds—the ability to secure low retail shopping rates and low SSO rates, while all other customers remaining on SSO pay for the risk premiums associated with such migration through their SSO prices.

Because participation in a utility’s SSO requires no contract or time commitment, large commercial and industrial customers presently can “arbitrage” their short-term position in the energy market by taking the SSO when it is advantageous for them to do so. Then, as soon as market prices fall, these same large commercial and industrial customers can re-enter the competitive market and leverage the size of their load to negotiate better deals for themselves.

This behavior, which the current CBP auction construct does not deter, has repercussions. First, it depresses participation in Ohio’s competitive energy market—making the market less efficient and resulting in higher prices for all customers. Second, and more importantly in this context, **it causes the customers remaining on SSO (oftentimes residential customers) to pay higher prices** because suppliers must account for the possibility that large commercial and industrial customers will decide to return to SSO for their own short-term benefit. To account for this risk, default service suppliers must incorporate additional risk premiums into their CBP auction bids to account for this behavior—raising SSO prices for all customers.

Unlike the current and stipulated CBP auction construct, Constellation’s proposed load migration pricing band encourages large commercial and industrial customers to remain in the competitive markets and deters them from transiently migrating back to SSO for their own short-term gain. It does this by making larger commercial and industrial customers consider the impact that migration of their load to the SSO will have on the overall default service PLC and the potential it will create to trigger the upper mitigation band threshold. In doing so, it also encourages these large commercial and industrial customers to remain in the competitive markets.

And, the load migration pricing band mitigates the risk that customers remaining on SSO will pay increased prices because of the potential migration of large commercial and industrial customers to/from the SSO.

**4. AEP Ohio’s consent to continuing jurisdiction over CBP issues is not a benefit of the Stipulation.**

Several signatory parties to the Stipulation, including AEP Ohio, describe AEP Ohio’s “consent to continuing jurisdiction” over CBP auction issues as a “significant” or “notable” part of the Stipulation. (*See, e.g.*, AEP Brief at 2, 27, 33; Staff Brief at 11; IGS Brief at 2). These arguments misrepresent the nature of this Stipulation provision, which actually provides no assurance that CBP auction issues will ever be addressed or become part of ESP V.

- a. The Stipulation does not require the establishment of a separate proceeding to address CBP auction issues.

The signatory parties assert that the Stipulation’s provision providing for “continuing jurisdiction” is sufficient to address current issues with the CBP auction construct. But it is uncontested that the Stipulation **does not require** the establishment of a separate proceeding to consider potential CBP modifications that will benefit AEP Ohio’s default service customers. (Hearing Tr. 56:22-57:2). AEP Ohio’s promise to “consent” to a proceeding that may never happen is empty and is not a “significant” or “notable” aspect of the Stipulation. Moreover, the Stipulation shortens the term of ESP V and one auction that would have otherwise been a part of ESP V has already been held. Accordingly, even if the Commission does eventually open a new proceeding to consider and adopt Constellation’s proposals, it is unlikely that such proposals would be implemented as part of ESP V—implicating the Stipulation’s conditions that would

allow AEP Ohio to reject the modifications and the Commission’s “continuing jurisdiction” over CBP auction issues.

Further, AEP Ohio conditions its willingness to consent to continuing jurisdiction on: (1) any adopted CBP auction modifications applying only during the term of ESP V; (2) AEP Ohio receiving “timely and adequate cost recovery” for any such CBP auction modifications; and (3) AEP Ohio receiving a “reasonable time to implement the modification.” (Joint Ex. 1 at 5). These Stipulation conditions would allow AEP Ohio to reject the modifications and the Commission’s “continuing jurisdiction” over CBP auction issues.

The Stipulation provides no further detail regarding the scope of these conditions or who determines whether they have been met. Undoubtedly, AEP Ohio will assert that it alone gets to make this determination, and that it gets to decide whether the Commission has provided “timely and adequate cost recovery” or a “reasonable” amount of time to implement. In effect, this gives AEP Ohio “veto” power over any future Commission decision finding that further CBP auction process modifications are required for the ESP V—further emphasizing the empty nature of this Stipulation promise.

- b. It is improper for the Commission to consider CBP auction issues outside of a utility’s SSO application proceeding.

Constellation’s initial brief also detailed the issues with the Stipulation’s proposal to “dismiss” issues pertaining to CBP auction design, which is the primary element of an ESP, to a separate proceeding for consideration. R.C. 4928.141 requires that public utilities apply to establish an SSO in accordance with R.C. 4928.142 or R.C. 4928.143. R.C. 4928.141(A). The proceedings established under these statutory provisions are the only mechanism available for authorization of an SSO. Critically, R.C. 4928.141 provides, among other things, that “[o]nly a **standard service offer authorized in accordance with Section 4928.142 or 4928.143 of the**

**Revised Code, shall serve as the utility’s [SSO] for the purpose of compliance with this section.”** This means that all parts of AEP Ohio’s ESP must be “authorized in accordance with” the statutory provisions providing for establishment of its ESP, and those statutory provisions do not contemplate piecemeal adoption of SSO components in proceedings outside the one initiated by AEP Ohio’s ESP V application. Indeed, AEP Ohio recently “warned” that the Commission may exceed its statutory authority if it made any material modification to an ESP outside of an ESP proceeding without the utility’s consent. *See In re the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, Finding and Order (Dec. 13, 2023) at ¶18.

AEP Ohio cannot have it both ways—“warning” the Commission that it may exceed its statutory authority if it acts outside of the ESP proceeding in one instance while simultaneously proclaiming its “consent to continuing jurisdiction” as a benefit here. The concept of a utility “consenting” to SSO modifications outside of its SSO proceeding appears nowhere in R.C. 4928.141. Thus, a utility’s “consent” to such modifications is not an actual exception to the statute’s requirement in this case and AEP Ohio’s self-serving claim otherwise should be given no weight. The Stipulation’s call for the Commission to consider these issues in another proceeding only—a proceeding that may never happen and that AEP Ohio admits may exceed the Commission’s statutory authority—is contrary to Ohio law and not a benefit of the Stipulation.

- c. The record here is sufficient to make CBP auction modifications now for the benefit of AEP Ohio’s default service customers.

Further, there is no reason for the Commission to wait to implement CBP auction modifications since the record contains significant evidentiary support that Constellation’s proposed modifications are in the public interest and will benefit AEP Ohio’s default service customers. As detailed above, the record shows that Constellation’s proposals will improve the

CBP auction process, increasing supplier participation and improving SSO prices. The record includes expert testimony from a highly-experienced and knowledgeable market participant – Mr. Indukuri. As further detailed in the next section, Mr. Indukuri has participated in numerous Ohio SSO auctions and understands the existing CBP (Const. Ex. 2, 1:8-12), which will basically be extended with little modification under the Stipulation. He also understands and has extensive experience with the auction structures in other jurisdictions. (Const. Ex. 2, 1:8-21). Constellation has presented reliable, convincing evidence on the proposed CBP auction modifications that the Commission can and should accept for the ESP V. The Commission has repeatedly stated that it wants to address the high SSO prices and improve supplier participation in the SSO auctions.<sup>3</sup> The Commission can and should adopt Constellation’s proposals now. The record demonstrates they are in the public interest and will benefit AEP Ohio’s default service customers.

**B. Attacks On Mr. Indukuri’s and Constellation’s Credibility Are Baseless.**

AEP Ohio attempts to undermine the substantial record evidence supporting Constellation’s proposals by predictably attacking the motivations of Constellation and credibility of Mr. Indukuri. These attacks are baseless and should be given no weight by the Commission.

**1. Mr. Indukuri was the only expert to present proposals to improve the CBP auction construct.**

AEP Ohio asserts in its initial brief that “Mr. Indukuri’s recommendation[s] lack merit and credibility and should not be adopted based on the record in this case.” (AEP Brief at 38). In support of this claim, AEP Ohio asserts, without evidence, that Mr. Indukuri has a “bias for higher

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<sup>3</sup> See *In re the Procurement of Standard Service Offer Generation for Customers of Ohio Power Co.*, Case No. 17-2391-EL-UNC, et al., Entry (Jan. 3, 2023) at ¶¶3-4; *In re the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, Entry (July 26, 2023) and Finding and Order (Dec. 13, 2023); and *In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case Nos. 22-900-EL-SSO, et al., Opinion and Order (Aug. 9, 2023) at ¶247.

SSO prices” and that Constellation has an incentive to “directly harvest[] higher prices as an auction supplier.” These claims are completely baseless and unsupported by the record, but nonetheless unsurprising coming from AEP.

Mr. Indukuri was the only expert witness to present testimony in this proceeding proposing improvements to AEP Ohio’s CBP auction process. Unlike any other witness, he has extensive experience participating in competitive utility default service procurements across PJM and ISO-NE. (Const. Ex. 2, 1:8-12). As a result, he has “a unique perspective of the advantages/disadvantages of the various procurement/product structures from a customer, SSO supplier and market standpoint.” (Const. Ex. 2, 1:17-21). It is from this perspective that he offered his proposals to improve AEP Ohio’s CBP auction construct—proposals that the record shows will benefit AEP Ohio’s default service customers through better SSO prices.

AEP Ohio’s claim that Mr. Indukuri has a “bias for higher SSO prices” misrepresents the hearing record. In support of this claim, AEP Ohio points to an exchange on cross-examination where Mr. Indukuri noted that customer migration to SSO service based on lower prices is not beneficial **if those prices do not properly reflect risks**. (Hearing Tr. 723:6-724:10). This is very different than expressing a “bias for higher SSO prices” as misrepresented by AEP Ohio. Rather, it shows Mr. Indukuri’s expert understanding that SSO prices are not beneficial to customers when the prices do not accurately reflect the risk of serving them (even if they are lower than then-current market prices for some customers) **because all customers pay higher than necessary SSO prices as a result**. (*Id.*). AEP Ohio’s attempt to paint Mr. Indukuri as “bias[ed] for higher SSO prices” is unsupported by the record and is a mischaracterization of Mr. Indukuri’s position.

**2. The illustrative data in Figure 3 shows the negative trend in Ohio auction clearing prices as compared to other states.**

AEP Ohio further attempts to undermine Mr. Indukuri's credibility by attacking Figure 3 in his direct testimony in support of Constellation's proposals. AEP Ohio's primary criticism is that Mr. Indukuri did not provide additional historical data showing Ohio auction prices and Pennsylvania auction prices. (AEP Brief at 37-38). AEP Ohio asserts that such data shows that its "slice of system" procurement approach has yielded better results for default service customers. (*Id.*).

As discussed above, AEP Ohio's criticism misrepresents the purpose and use of Figure 3 by Mr. Indukuri. Mr. Indukuri's testimony details recent market events and the impact they have had on default service prices across jurisdictions. (Const. Ex. 2, 18:16-19:12). Figure 3 shows that these market events **have had a greater impact on Ohio** than in other states with different procurement structures, such as Pennsylvania. (*Id.*; Const. Ex. 2, 25:22-26:2). This trend has continued in more recent auctions, where default service customers of many Pennsylvania electric utilities continue to see lower auction results than AEP Ohio's default service customers despite Pennsylvania utilities having more components embedded within their SSO product. (AEP Oh. Ex. 9, Kelso Rebuttal Test., Exhibit LOK-1 at 8). AEP Ohio's assertion that Mr. Indukuri should have nonetheless presented additional historical data ignores these important differences between Ohio's and Pennsylvania's default service products and the importance of recent market events to the analysis.

AEP Ohio also overstates the importance of the "broader set of data" provided by Ms. Kelso in her rebuttal testimony. Mr. Indukuri looked at recent auction data because it is recent market events that have exasperated the problems inherent in the current CBP auction construct. As Mr. Indukuri pointedly explained, the "actual losses or the risk of losses, and the costs to



procure a greater supply of energy than what was previously believed to be necessary and procured, **become the future cost of doing business and are reflected in [default service] prices.**” (Const. Ex. 2, 13:22-14:2) (emphasis added).

Further, the historical data presented by Ms. Kelso does not adjust Pennsylvania’s procurement results to remove the additional components of Pennsylvania’s SSO product (the transmission and renewable energy credit costs). (AEP Ohio Ex. 9, Kelso Rebuttal Test., 5:17-21; Hearing Tr. 822:3-11). As a result, AEP Ohio’s assertion that such results “undercut” Constellation’s proposal are purely speculative since, as Mr. Indukuri acknowledged and explained in his testimony, Pennsylvania’s default service auction clearing prices are inflated as compared to Ohio’s because the Pennsylvania default service product includes additional components. (Const. Ex. 2, 25:15-23).

Even AEP Ohio’s witness Lisa Kelso acknowledged at hearing the relative unimportance of these additional historical results, stating “just because there’s been certain performance in the past doesn’t necessarily predict the future.” (Hearing Tr. 821:23-25). She further acknowledged that removing the transmission and renewable energy credit costs from Pennsylvania auction clearing prices could result in them being lower than Ohio’s historical auction clearing prices. (Hearing Tr. 820:25:821:16). Notably, Ms. Kelso does not directly participate in SSO auctions, and her experience with them is limited to checking in with her team on the day of the auction and participating in discussions about regulatory-related SSO issues if and when they arise. (Hearing Tr. 812:21-816:3). Her lack of experience is in stark contrast to Mr. Indukuri’s extensive knowledge and years of experience with such procurements. (Const. Ex. 2, 1:8-2:2). As the only expert to testify, the Commission should afford Mr. Indukuri’s testimony great weight.

Contrary to AEP Ohio's assertions in its attempt to undermine Mr. Indukuri's credibility and Constellation's proposal, what is relevant in this proceeding is how suppliers are pricing risk today—not how they priced risk in the past. Mr. Indukuri's testimony directly addresses this issue. Recent auction results show that Ohio's default service customers have been more impacted by recent market events and that AEP Ohio's CBP auction construct has been a significant factor in leading to that result. In order to address these concerns, it is appropriate for the Commission to modify the CBP auction construct for the ESP V.

**3. Constellation's proposals are commonly used in other jurisdictions and do not operate to provide additional profits to default service suppliers.**

AEP Ohio further criticizes Constellation's proposals by arguing that Constellation has an incentive to propose CBP auction modifications that will increase SSO prices. (AEP Brief at 38). This "argument" is predictably and completely unsupported by any record evidence. Constellation's proposals are well-reasoned, commonly implemented in other jurisdictions, and supported by expert testimony and data demonstrating that AEP Ohio's default service customers will benefit from their implementation through better SSO auction prices.

Moreover, AEP Ohio's implication that Constellation's proposals were made in an attempt to increase SSO prices is contradicted by the very nature of those proposals. Class-based auctions, which are commonly used in other jurisdictions, result in a more efficient market and more accurate pricing, reducing overall costs for AEP Ohio's default service customers. (Const. Ex. 2, 26:6-15). Further, the proposed load migration pricing band (which, again, is similar to a mechanism adopted and endorsed by the Maryland Commission) acts as a direct pass-through of SSO supplier costs—meaning that suppliers will not profit directly from its implementation either. (Const. Ex. 2, 20:4-5; Hearing Tr. 692:2-12). These modifications will also result in greater

supplier participation in CBP auctions, which increases competition and result in better SSO prices. (Hearing Tr. 781:10-14).

AEP Ohio's argument that Constellation made these proposals in an effort to increase SSO prices cannot withstand the simple fact that these mechanisms are commonly used in other jurisdictions (because they benefit default service customers) and that they do not operate to provide additional profits to default service suppliers. The record in this proceeding supports a finding by the Commission that limiting default supplier risk through reasonable measures can benefit customers and the competitive market.

**C. AEP Ohio Has Not Met Its Burden of Proof By Not Including Testimony and Evidence To Show The Proposed ESP Meets The Necessary Statutory And Regulatory Criteria.**

AEP Ohio and many other signatory parties assert that the evidentiary record supports a Commission finding that the proposed ESP meets necessary statutory criteria for approval under R.C. 4928.143. (*See, e.g.,* AEP Brief at 99-102; CUB Brief at 10; OPAE Brief at 2; OMAEG/Kroger Brief at 18; OEC Brief at 8, 11-13). Most of these arguments assert generally that the use of a CBP means that the proposed ESP is the same as an MRO; however, they argue, the proposed ESP also contains other provisions that make it superior to an MRO—thus meaning the ESP passes the statutory test.

These arguments fail to recognize that the evidentiary record lacks important information that the Commission needs to make these determinations. The Commission should take a close look at the lack of evidence actually admitted into the evidentiary record and determine that it is insufficient to approve the ESP as proposed in the Stipulation. Simply put, AEP Ohio did not meet its burden of proof.

**1. The record lacks important information required by the Commission’s regulations.**

As noted by OCC and One Energy in their initial briefs, AEP Ohio’s proposed ESP includes many important components for which there is little to no support in the evidentiary record. (See, e.g., One Energy Brief at 4-8; OCC Brief at 60). Information required by the Commission’s regulations was not included in the record—information the Commission has previously emphasized the importance of having when analyzing whether an SSO has met statutory requirements, stating “[t]he filing requirements and the analysis that the electric utility must provide and comply with **provide the Commission with sufficient information to determine if the SSO application complies with R.C. 4928.141, 4928.142, and 4928.143.**” *In re the Commission’s Review of Its Rules for Standard Service Offers for Electric Utilities Contained in Chapter 4901:1-35, Ohio Administrative Code*, 2014 Ohio PUC LEXIS 202, Case No. 13-2029-EL-ORD, Finding and Order (Aug. 27, 2014) at \*85 (emphasis added). In this case, as detailed below, AEP Ohio decided it was not important for the Commission to have this information in evaluating the proposed ESP as presented by the Stipulation. As a result, the Commission lacks an adequate record to support a conclusion that the proposed ESP meets necessary statutory and regulatory criteria for approval.

a. The evidentiary record contains little to no information about the CBP auction process to be implemented under the Stipulation.

The record is particularly absent when it comes to describing the CBP to be used under the ESP proposed by the Stipulation. This is particularly troubling given that a utility’s CBP plan is supposed to be the “primary element” of its ESP. See *In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, et al., 2023 Ohio PUC LEXIS 800, Case No. 22-900-EL-SSO, et seq., Opinion and Order (Aug. 9, 2023). Because of the

important role that CBPs play under a utility's SSO offering, the Commission's regulations contain numerous detailed requirements for utilities that propose the use of a CBP as part of their SSO.

O.A.C. 4901:1-35-03(B)(2)(a) – (l). These requirements include, among other things, providing:

- A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan;
- Detailed descriptions of how the CBP plan ensures an open, fair, and transparent competitive solicitation that is consistent with and advances the policies found in R.C. 4928.02;
- Draft copies of all forms, contracts, or agreements that must be executed during or upon completion of the CBP;
- A clear description of the proposed methodology by which all bids will be evaluated;
- Alternative retail rate options that were considered in the development of the CBP plan;
- A description of generation service procurement options that were considered and the rationale for selection of any and all procurement options; and
- An explanation of known and anticipated obstacles that may create difficulties or barriers for the adoption of the proposed bidding process.

AEP Ohio decided it did not have to provide independent evidence to support (or even describe) many components of its proposed ESP after the Stipulation was filed, and, therefore, the record is completely empty of information or evidence about these important aspects of a CBP. Moreover, the Commission **could not even fully describe** the CBP as originally proposed or as stipulated based on the information in the record. The Commission should refuse to adopt a CBP based on a record that is completely devoid of the information necessary and important for a CBP's consideration.

AEP Ohio has the burden of proof in this proceeding under R.C. 4928.141. AEP Ohio's decision not to offer independent evidence describing and supporting its CBP and other components of the stipulated ESP means it has not made a *prima facie* showing that its burden of

proof has been met. The Commission must consider only the evidence in the record when making its determination and cannot rely on evidence that parties have had no opportunity to challenge. *See In re E. Ohio Gas Co.*, 2023-Ohio-3289, 2023 Ohio LEXIS 1824, at ¶ 43 (citing to *Tongren v. PUC*, 85 Ohio St. 3d 87, 706, N.E.2d 1255 (1999)). Here, AEP Ohio has failed to introduce into the record crucial evidence to support important components of the proposed ESP and, accordingly, the Commission lacks the record necessary to approve the stipulated ESP.

b. The record contains no information about other important elements of the proposed ESP.

There are various other aspects and components of AEP Ohio's proposed ESP for which there is no support in the record. Like with the CBP auction process, the evidentiary record contains significant deficiencies with respect to the following aspects and components of AEP Ohio's proposed ESP:

- **Pro Forma Financials:** The record does not include required pro forma financial projections for AEP Ohio resulting from the proposed ESP. OAC 4901:1-35-03(C)(2) requires that a public utility provide pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP. AEP Ohio's application relied on the direct testimony of Curtis Heitkamp to meet this requirement. Mr. Heitkamp's direct testimony is **not** in the evidentiary record and neither the Stipulation nor any testimony supporting the Stipulation addresses this requirement for the proposed ESP.
- **Rate Impacts:** The record does not include rate impacts of the proposed ESP for all customer classes/rate schedules. OAC 4901:1-35-03(C)(3) requires that a public utility provide projected rate impacts by customer class/rate schedule for the duration of the ESP. AEP Ohio's application again relied on the direct testimony of Curtis Heitkamp to meet this requirement. Mr. Heitkamp's direct testimony is **not** in the evidentiary record. Ms. Mayhan's testimony in support of the proposed ESP provides a "Summary of Proposed ESP Rate Changes" for SSO residential customers but does not address rate impacts for any other customer class/rate schedule. There is no record evidence supporting the rate impacts that will result to other customer classes/rate schedules from the proposed ESP.
- **Distribution Infrastructure Program:** The record does not include necessary information about AEP Ohio's distribution infrastructure incentive mechanism under the proposed ESP. OAC 4901:1-35-03(g) requires a public utility to provide multitudes of information about a proposed distribution infrastructure plan. OAC 4901:1-35-03(g)(i)-(v).

- AEP Ohio’s application relied on the direct testimony of Thomas Kratt to meet requirements pertaining to describing the current state and functionality of AEP Ohio’s distribution system as well as the need for the distribution infrastructure incentive mechanism. Mr. Kratt’s direct testimony is **not** in the record. Neither the Stipulation nor any testimony in support of the Stipulation addresses this information.
- AEP Ohio’s application relied on the direct testimony of Ryan Forbes to meet requirements pertaining to describing the costs of the plan, including the work to be done. Mr. Forbes direct testimony is **not** in the record. Neither the Stipulation nor any testimony in support of the Stipulation addresses this information.
- AEP Ohio’s application relied on the direct testimony of Stephen Swick to support physical security upgrades included as part of the plan. Mr. Swick’s direct testimony is **not** in the record. Neither the Stipulation nor any testimony in support of the Stipulation addresses this information.
- AEP Ohio’s application relied on the direct testimony of Mr. Newman to support the economic benefits of the distribution infrastructure incentive mechanism. Mr. Newman’s direct testimony is **not** in the record. Neither the Stipulation nor any testimony in support of the Stipulation addresses this information.
- **Energy Efficiency Programs:** The record does not include required information about AEP Ohio’s newly proposed energy efficiency program. OAC 4901:1-35-03(h) requires that a public utility proposing energy efficiency programs pursuant to R.C. 4928.143 include “a complete description of the proposal, together with a cost-benefit analysis or other quantitative justification, and quantification of the programs projected impact on rates.” AEP Ohio’s application relied on the direct testimony of Brian Billing to meet this requirement. Mr. Billing’s direct testimony is **not** in the record. The Stipulation addresses changes to the energy efficiency programs resulting from the Stipulation but does not include the detailed information required by Commission regulations. Ms. Mayhan’s direct testimony in support of the Stipulation describes changes to the energy efficiency program resulting from the Stipulation, lists the energy efficiency programs to be included under the proposed ESP, and provides the projected rate impact the energy efficiency programs will have on residential customers. (AEP Ohio Ex. 2, 12:5-20, 17:4-12, 20:11, Table 1). The record does not include, however, “a complete description” of the energy efficiency programs under the proposed ESP.

AEP Ohio’s failure to introduce this important information into the record means the Commission has nothing it can point to in approving these aspects of AEP Ohio’s proposed ESP. The Commission cannot endorse a proposed ESP and programs based on an evidentiary record that does not allow it to even fully describe—let alone analyze—all aspects of the ESP.

**2. The record does not demonstrate that several large programs provide more benefits than costs, undermining a determination that the proposed ESP is more favorable in the aggregate than an MRO.**

AEP Ohio argues that the proposed ESP is more favorable in the aggregate than an MRO because it includes various programs that it claims provide additional benefits to customers. As OCC points out in its initial brief though, the record is devoid of evidence that these programs will actually benefit AEP Ohio's customers.

For example, the Stipulation makes various modifications to AEP Ohio's distribution infrastructure investment rider ("DIR") and enhanced system reliability rider ("ESRR") programs, including modifying proposed caps on spending for each. (Joint Ex. 1 at 11, 19-20). AEP Ohio, however, presented no evidence or testimony supporting that these programs continue to provide a net benefit to its customers at the proposed spending levels.

In its initial application, AEP Ohio indicated that it had presented various information explaining and supporting the proposed DIR, including the planned investments, the need for the program, and the purported economic benefits of the program. (AEP Ohio Ex. 1 at 5, 12). However, none of that information is in the record and cannot be cited to or relied on by the Commission. Indeed, based on the record evidence, the Commission cannot say whether there will be any net reliability benefits to AEP Ohio's customers resulting from the DIR spending contemplated by the Stipulation. As a result, the Commission lacks the information it needs to determine that the DIR as proposed by the Stipulation is indeed a benefit that makes the proposed ESP more beneficial in the aggregate than an MRO.

The same is true of AEP Ohio's ESRR program under the Stipulation. The record contains no evidence showing the anticipated benefits to customers from the ESRR. AEP Ohio argues that the Commission need not have information because it is difficult to determine, stating "there is no



consistent or reliable basis for AEP Ohio to project specific reliability impacts based on future vegetation spending.” (AEP Brief at 49-50). But AEP Ohio cites no record evidence to support this assertion either. Further, even if AEP Ohio’s unsupported assertion is true, the Commission can only use it to conclude it is hard to tell whether the ESRR proposed by the Stipulation will actually benefit customers. As with the DIR, this means the Commission lacks the record evidence necessary to determine the ESRR as proposed by the Stipulation is a benefit that makes the proposed ESP more favorable in the aggregate than an MRO.

Because AEP Ohio decided it was unnecessary to introduce any evidence or testimony setting forth the details of the DIR or ESRR, or the projected net benefits customers will experience from those programs as modified by the Stipulation, the Commission has no record it can rely on to determine that they are an actual benefit of the Stipulation. Without this information in the record, any determination that these programs are an actual benefit of the proposed ESP is based on complete speculation. The Commission should refuse to engage in such speculation in fulfilling its statutory duty to determine whether the proposed ESP is more favorable in the aggregate than an MRO.

**D. A Stipulation Is Not In the Public Interest Simply Because It Gives The Utility Less Than It Requested.**

In support of their arguments that the Stipulation benefits ratepayers and is in the public interest, several signatory parties rely heavily on the fact that the proposed ESP under the Stipulation is what they generally characterize as a “substantial” improvement over AEP Ohio’s initial application. (*See, e.g.*, RESA Brief at 2; IGS Brief at 10-11). At the same time, however, many of these same signatory parties assert that the proposals being modified from AEP Ohio’s initial application were unjust, unreasonable, and unlawful as proposed. (*Id.*). The Commission should not give credence to arguments that these Stipulation provisions are beneficial and should

not find that the Stipulation is in the public interest simply because it gives AEP Ohio less than it initially requested.

**1. The Commission should not encourage the inclusion of unreasonable and unlawful provisions in an application by considering their removal to be a Stipulation benefit.**

IGS argues the Stipulation is in the public interest because it removes or modifies certain AEP Ohio proposals from its initial application that it describes as having been unreasonable and unlawful as proposed. (IGS Brief at 10-11). The Commission should not give this argument any weight for two reasons. First, considering the removal of unreasonable and unlawful provisions from an application via settlement to be a benefit will only encourage utilities to include unlawful and unreasonable proposals in their applications in order to “give them away” in a stipulation. This result benefits no one and serves only to artificially inflate the supposed value of the resolutions presented to the Commission.

Second, if these provisions of AEP Ohio’s initial application were indeed unreasonable and unlawful as proposed, the Commission could not have approved them as part of the ESP regardless of whether they were removed by the Stipulation. *See, e.g., In re the Application of The Dayton Power and Light Co. to Establish a Standard Service Offer in the Form of an Electric Security Plan*, et al., 2019 Ohio PUC LEXIS 1509, Case Nos. 16-395-EL-SSO, *et seq.*, Supplemental Opinion & Order (Nov. 21, 2019) at ¶¶108-110 (removing an ESP provision found to be unlawful and therefore in violation of important regulatory practices and principles). The Commission should not consider the removal of an application proposal it could not have approved in the first place to be a benefit of the Stipulation.

**2. The Commission should not encourage inordinate rate increase proposals by considering more moderate rate impacts to be a Stipulation benefit.**

Walmart, the Ohio Environmental Council, and OMAEG/Kroger all argue the Stipulation is in the public interest because it calls for more moderate rate increases than what was initially proposed under AEP Ohio's application. (Walmart Brief at 6-7; Ohio Environmental Council Brief at 6; OMAEG/Kroger Brief at 16-17).

In making this argument, Walmart specifically notes that adoption of AEP Ohio's proposed return on equity ("ROE") from its application, which was in excess of its Commission-approved ROE from its last rate case, would have resulted in increased costs to customers. (Walmart Brief at 6-7). Walmart thus reasons that AEP Ohio's acceptance in the Stipulation of its Commission-approved ROE is a benefit. (*Id.*).

The Ohio Environmental Council further notes that AEP Ohio's initial application requested extraordinarily large rate increases that would have had a cumulative rate impact for residential customers of 16.3% over six years. (Ohio Environmental Council Brief at 6). Accordingly, it reasons that the rate impacts resulting from the Stipulation benefit ratepayers.

This case is a perfect example of why the Commission should be skeptical of arguments that more moderate rate impacts resulting from a Stipulation are definitively a benefit to customers. AEP Ohio's acceptance of its currently Commission-approved ROE only appears to be a benefit of the Stipulation because it chose to propose a substantial ROE increase (95 basis points or almost 10%) in its initial application. The same argument can be made for the "more modest" rate impacts resulting from the Stipulation, which look particularly good when compared to the extraordinary rate increases initially proposed by AEP Ohio. To accept an argument that a stipulation is in the

public interest just because the utility receives less than requested without taking a much deeper look is akin to paying \$10,000 for a \$2,000 car just because the asking price was \$25,000.

To determine whether the Stipulation is indeed a good deal for AEP Ohio's customers, the Commission must look beyond the rate impacts resulting from the Stipulation to see what AEP Ohio's customers are actually getting for their money. Here, there is little record evidence to support that AEP Ohio's customers are getting net benefits from several large programs in the proposed ESP. Moreover, despite CBPs being the "primary element" of a utility's SSO, AEP Ohio's default service customers are similarly not getting any CBP auction changes as part of the Stipulation—changes that the Commission knows are desperately needed to fix systemic issues contributing to decreased supplier turnout and increased risk premiums imbedded into historically higher SSO prices.

In light of these deficiencies in what customers are actually getting under the Stipulation, AEP Ohio simply getting less money than it initially requested cannot be enough for the Commission to find that the Stipulation is just and reasonable.

**3. The Commission should not encourage "throw away" proposals by considering their removal to be a Stipulation benefit.**

In the Stipulation, AEP Ohio agreed to withdraw several of its application proposals, including the following:

- A proposed Governmental Aggregation Standby Rider ("GASR") (Joint Ex. 1 at 6);
- Proposed electric transportation program incentives (Joint Ex. 1 at 12);
- Proposed energy efficiency programs for business customers (Joint Ex. 1 at 25);
- A proposed Rural Access Rider (Joint Ex. 1 at 27); and
- A proposed Residential Senior Citizen Tariff (Joint Ex. 1 at 34).

The Commission should not consider the withdrawal of these proposals to be a benefit of the Stipulation because it will only encourage utilities to propose more programs in their applications solely so they can be withdrawn during settlement negotiations. Here, despite AEP Ohio's purported belief that these proposals would benefit customers, AEP Ohio was willing to simply "give up" on them for years in order to reach a Stipulation. AEP Ohio's disingenuous proposal is exemplified by the single sentence treatment of the proposed (and withdrawn) GASR in its initial brief. In support of its agreement to withdraw the GASR as part of the Stipulation, AEP Ohio simply states "[f]inally, regarding the SSO, the controversial (but well-intentioned) governmental aggregation standby rider was dismissed with prejudice through serious bargaining." (AEP Brief at 4). The Commission should not encourage this practice further by considering AEP Ohio's uncontested withdrawal of these proposals to be a benefit of the Stipulation.

\* \* \*

A stipulation should be based on its contents (what it includes and what it should include). It should not be considered based on a comparison of what the utility requested versus the negotiated result of a stipulation. That comparison should only be considered in the context of whether a stipulation was seriously bargained for between the signatory parties.

### III. CONCLUSION

For these reasons, and those set forth in its initial brief, Constellation respectfully requests that the Commission issue an order modifying the Stipulation and the CBP auction construct to include: (1) load migration pricing bands, and (2) class-based auctions.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

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Summary: Reply Brief electronically filed by Mr. Michael J. Settineri on behalf of  
Constellation Energy Generation LLC and Constellation NewEnergy Inc..